



Senate

General Assembly

File No. 624

January Session, 2001

Substitute Senate Bill No. 1054

Senate, May 7, 2001

The Committee on Government Administration and Elections reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CONTRACT COMPLIANCE PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 46a-56 of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (c) If the commission determines through its [complaint] contract
4 compliance procedure and after a hearing pursuant to section 46a-68h,
5 as amended by this act, that a contractor or subcontractor is not
6 complying with antidiscrimination statutes or contract provisions
7 required under section 4a-60 or 4a-60a or the provisions of section 46a-
8 68c, 46a-68d, as amended by this act, 46a-68e or 46a-68f, [(A)] (1) the
9 state shall retain two per cent of the total contract price per month on
10 any existing contract with such contractor, and [(B)] (2) the contractor
11 shall be prohibited from participation in any further contracts with
12 state agencies until: [(i)] (A) The expiration of a period of two years
13 from the date of the finding of noncompliance, or [(ii)] (B) the

14 commission determines that the contractor has adopted policies
15 consistent with such statutes. The commission shall make such a
16 determination as to whether the contractor has adopted such policies
17 within forty-five days of its determination of noncompliance. In
18 addition, the commission may do one or more of the following: [(1)] (i)
19 Publish or cause to be published, the names of contractors or unions
20 which it has found to be in noncompliance with such provisions; [(2)]
21 (ii) notify the attorney general that, in cases in which there is
22 substantial or material violation or the threat of substantial or material
23 violation of the contractual provisions set forth in section 4a-60 or 4a-
24 60a, appropriate proceedings should be brought to enforce those
25 provisions, including the enjoining, within the limitations of applicable
26 law, of organizations, individuals or groups who prevent directly or
27 indirectly, or seek to prevent directly or indirectly, compliance with
28 the provisions of said section 4a-60 or 4a-60a; [(3)] (iii) recommend to
29 the Equal Employment Opportunity Commission or the Department of
30 Justice that appropriate proceedings be instituted under Title VII of the
31 Civil Rights Act of 1964, when necessary; [(4)] (iv) recommend to the
32 appropriate prosecuting authority that criminal proceedings be
33 brought for the furnishing of false information to any contracting
34 agency or to the commission as the case may be; [(5)] (v) order the
35 contracting agency to refrain from entering into further contracts, or
36 extension or other modifications of existing contracts, with any
37 noncomplying contractor, until such contractor has satisfied the
38 commission that such contractor has established and will carry out
39 personnel and employment policies in compliance with
40 antidiscrimination statutes and provisions of section 4a-60 or 4a-60a
41 and sections 46a-68c to 46a-68f, inclusive. The commission shall adopt
42 regulations in accordance with chapter 54 to implement the provisions
43 of this section.

44 Sec. 2. Subsection (d) of section 46a-56 of the general statutes is
45 repealed and the following is substituted in lieu thereof:

46 (d) If the commission determines through its [complaint] contract
47 compliance procedure and after a hearing held in accordance with
48 chapter 54 that, with respect to a state contract, a contractor,
49 subcontractor or supplier of materials has (1) fraudulently qualified as
50 a minority business enterprise, or (2) performed services or supplied
51 materials on behalf of another contractor, subcontractor or supplier of
52 materials knowing (A) that such other contractor, subcontractor or
53 supplier has fraudulently qualified as a minority business enterprise in
54 order to comply with antidiscrimination statutes or contract provisions
55 required under section 4a-60 or 4a-60a, and (B) that such services or
56 materials are to be used in connection with a contract entered into
57 pursuant to subsection (b) of section 4a-60g it shall assess a civil
58 penalty of not more than ten thousand dollars upon such contractor,
59 subcontractor or supplier of materials. The Attorney General, upon
60 complaint of the commission, shall institute a civil action in the
61 superior court for the judicial district of Hartford to recover such
62 penalty. Any penalties recovered shall be deposited in a special fund
63 and shall be held by the Treasurer separate and apart from all other
64 moneys, funds and accounts. The resources in such fund shall,
65 pursuant to regulations adopted by the commission in accordance with
66 the provisions of chapter 54, be used to assist minority business
67 enterprises. As used in this section, "minority business enterprise"
68 means any contractor, subcontractor or supplier of materials fifty-one
69 per cent or more of the capital stock, if any, or assets of which is owned
70 by a person or persons: [(1)] (i) Who are active in the daily affairs of the
71 enterprise; [(2)] (ii) who have the power to direct the management and
72 policies of the enterprise; and [(3)] (iii) who are members of a minority,
73 as such term is defined in subsection (a) of section 32-9n.

74 Sec. 3. Section 46a-68d of the general statutes is repealed and the
75 following is substituted in lieu thereof:

76 In addition to the provisions of section 4a-60, every public works
77 contract [subject to the provisions of part II of chapter 60] in excess of

78 five hundred thousand dollars in any fiscal year shall also be subject to
79 the provisions of this section. After a [bid] proposal has been accepted
80 but before a contract is awarded, the successful [bidder] contractor
81 shall file and have approved by the commission an affirmative action
82 plan. The commission may provide for conditional acceptance of an
83 affirmative action plan provided written assurances are given by the
84 contractor that it will amend its plan to conform to affirmative action
85 requirements. The state shall withhold two per cent of the total
86 contract price per month from any payment made to such contractor
87 until such time as the contractor has developed an affirmative action
88 plan, and received the approval of the commission. Notwithstanding
89 the provisions of this section, a contractor subject to the provisions of
90 this section may file a plan in advance of or at the same time as its [bid]
91 proposal. The commission shall review plans submitted pursuant to
92 this section within sixty days of receipt and either approve, approve
93 with conditions or reject such plan. When the commission approves an
94 affirmative action plan pursuant to this section, it shall issue a
95 certificate of compliance to the contractor as provided in section 46a-
96 68c.

97 Sec. 4. Section 46a-68h of the general statutes is repealed and the
98 following is substituted in lieu thereof:

99 If the commission issues an order pursuant to [subdivision (5)]
100 subparagraph (B)(v) of subdivision (2) of subsection (c) of section 46a-
101 56, as amended by this act, the contractor or subcontractor may request
102 a hearing within fifteen days of receipt of such order to allow such
103 contractor or subcontractor to show cause why the commission's order
104 should not be implemented. Upon receipt of a request for a hearing,
105 the commission shall appoint a hearing officer or human rights referee
106 pursuant to the procedures adopted by the commission. Any hearing
107 requested pursuant to this section shall be conducted in accordance
108 with the provisions of sections 4-177 to 4-182, inclusive.

109 Sec. 5. This act shall take effect July 1, 2001.

GAE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Commission on Human Rights and Opportunities

Municipal Impact: None

Explanation**State Impact:**

The bill authorizes the Commission on Human Rights and Opportunities (CHRO) to make one determination concerning whether a contractor is in compliance with anti-discrimination statutes. This decision shall be made during a hearing in its contract compliance proceedings. The commission will not be required to make this determination during complaint discrimination hearings. The commission reports that it can do this at the present time during a hearing, therefore the bill conforms an existing practice to the statutes. There is no fiscal impact for the CHRO as a result of this bill.

OLR Bill Analysis

sSB 1054

AN ACT CONCERNING CONTRACT COMPLIANCE PROCEDURES.**SUMMARY:**

By law, the Commission on Human Rights and Opportunities (CHRO) is generally responsible for determining whether contractors with the state comply with the state's anti-discrimination statutes, required contract provisions, and contract compliance provisions.

This bill abbreviates the process CHRO must follow to determine that a contractor is noncompliant and thus subject to sanctions. Instead of CHRO making two determinations, one at the end of its contract compliance proceedings and another at the end of its complaint proceedings, the bill requires it to make only the first one after a hearing. This process also makes it impossible for the sanctions to be imposed outside of the contract compliance process.

The bill also eliminates the opportunity for the commission to determine, thorough its complaint proceedings, whether a contractor has (1) falsely qualified as a minority business enterprise or (2) performed services for another person knowing that he falsely qualified as a minority business enterprise and that the services are to be used in connection with a contract awarded under the minority set-aside program. The bill instead requires the commission to make this determination after a hearing following its contract compliance proceedings.

Lastly, the bill extends to all contractors on state public works projects over \$500,000 a requirement to have their affirmative action plan approved by the CHRO.

EFFECTIVE DATE: July 1, 2001

DETERMINATION OF NONCOMPLIANCE AND RESULTING SANCTIONS

By law, a CHRO determination that a contractor is noncompliant triggers certain sanctions. The bill allows CHRO to make what is now an initial determination a final one. This action subjects noncompliant contractors to the following mandatory sanctions without a hearing:

1. a ban on their participation in future contracts for two years or until they comply and
2. retention by the state of two percent of the total contract price on any existing contract.

Additionally, CHRO may do any of the following:

1. publish the contractor's name as someone not in compliance with state law,
2. notify the attorney general that appropriate proceedings should be brought if there is a material or substantial violation of the contractual provisions,
3. recommend to the Equal Employment Opportunity Commission that appropriate proceedings be instituted under Title VII,
4. recommend that the contractor be prosecuted for giving false information to the contracting agency or the commission, or
5. order the contracting agency to refrain from entering future contracts or modifying or extending existing contracts with the contractor.

AFFIRMATIVE ACTION PLAN SUBJECT TO CHRO REVIEW

The bill requires contractors who are awarded the following public works contracts valued at over \$500,000 to submit their affirmative action plan to CHRO for approval: (1) Department of Public Works (DPW) design-build projects; (2) special state projects, such as correctional facility and juvenile detention center projects; (3) projects

managed by political subdivisions, other than municipalities and (4) Department of Transportation (DOT) projects, (However CHRO and DOT currently operate under a Memorandum of Understanding that allows DOT, rather than CHRO, to make compliance determinations regarding DOT projects.) Under existing law, unchanged by the bill, contractors with 50 or more employees who are awarded public works contracts over \$50,000 in any fiscal year must have CHRO approve their affirmative action plan.

BACKGROUND

Contract Compliance Proceedings

CHRO sends the contractors a contract monitoring report form, which they complete and return within 30 days, unless CHRO grants an extension. The contractor must use the form to report his employment practices and procedure. Upon receipt of the form, CHRO:

1. conducts a desk audit review,
2. conducts a field review if necessary,
3. completes a performance review, and
4. issues a certificate of compliance or a notice of noncompliance, depending on the circumstances.

CHRO includes in any letter of noncompliance suggested steps to achieve compliance. It follows up with a letter of agreement to achieve compliance with the contractor. If the contractor does not achieve compliance within a specified period, CHRO can file a complaint and; thus, begin its complaint procedure (Agency Regs. § 46a-68j-21 et. seq.)

Contract Compliance Requirements

By law, state contracts must contain provisions prohibiting discrimination and requiring contractors to (1) state in their employment solicitations that they are affirmative action and equal opportunity employers, (2) give unions and other worker representatives with whom the contractor has a collective bargaining

agreement or other understanding a notice of its commitment to anti-discrimination and affirmative action, (3) comply with CHRO's contract compliance procedures, (4) provide CHRO with information and allow record access, and (5) make a good faith effort to hire minority enterprises as subcontractors if the contract involves a public works project.

Design-Build Projects

The DPW commissioner may negotiate contracts on these projects with a single contractor most qualified to perform all phases of the work (i.e., design and build) without going through the formal bidding process.

Legislative History

On April 18, the Senate referred the bill (File 239) to the Government Administrations and Elections Committee, which reported it out on April 25 adding a requirement for CHRO to hold a hearing before determining whether a contractor has complied with statutory compliance provisions.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 18 Nay 0